Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
High-cost Universal Service Support	)	WC Docket No. 05-337

REPLY COMMENTS OF THE
MONTANA PUBLIC SERVICE COMMISSION

I. Overview

In its December 9, 2005, Notice of Proposed Rulemaking (NOPR) the Federal Communications Commission (FCC) sought comment on issues raised by Section 254(b) and the United States Court of Appeals for the Tenth Circuit's (10th Circuit) February 23, 2005, decision in Qwest v. FCC (Qwest II or QII).[1] The FCC's NOPR sought specific comments on how to reasonably

[1] As the FCC explained, the court remanded the Order on Remand to the FCC. In its remand, the court held that the FCC failed to reasonably define the terms "sufficient" and "reasonably comparable." On remand the FCC is to articulate a definition of "sufficient" that appropriately considers the range of principles in Section 254 and that defines "reasonably comparable" in a manner that comports with its duty to both preserve and to advance universal service. Furthermore, because the non-rural mechanism rests on the definition of reasonably comparable rates that the court invalidated, deeming the support mechanism invalid, the court also required the FCC to craft a support mechanism that takes into account all the factors in its statutory obligation to preserve and advance universal service. The court upheld the FCC finding that Section 254 does not require the states to

define the terms "sufficient" and "reasonably comparable" in light of QII.[2] The NOPR also seeks comment on the support mechanism for non-rural carriers, which the QII court invalidated, due to an inadequate interpretation of statutory principles and failure to explain how a cost-based mechanism addresses rate problems. In a January 26, 2006, Public Notice the FCC extended until May 26, 2006 the filing date for reply comments.

The Montana Public Service Commission (MTPSC) has reviewed the FCC's NOPR. Based upon that review combined with a review of certain initial comments we submit the following reply comments. We discuss our points of concurrence and our points of disagreement with certain other parties' initial comments.

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replace existing subsidies with explicit subsidies. The court did affirm the FCC's order wherein it required states to certify annually that rural rates are reasonable comparable, or to present an action plan to the FCC. *NOPR, p. 5.*

[2] The FCC seeks comment on: (1) how the definition of "sufficient" takes into account all seven of the principles in Section 254(b) including whether there are conflicts among the principles that require balancing and the weighing of each principle given the purposes of the non-rural mechanism; (2) how to define "reasonably comparable" under Section 254(b)(3) consistent with the duty to preserve and advance universal service; (3) how to modify the funding mechanism for rural carriers and (4) whether to adopt a non-rural insular mechanism. *NOPR, p. 5.* The FCC asks whether if rates in rural areas are reasonably comparable to rates in urban areas, those rates are affordable. The FCC seeks comments on whether to define an affordable benchmark in relationship to income (e.g., SBC's median household income proposal) or, if, in the alternative, whether the FCC should create for non-rural support "eligibility requirements" based on household income; the FCC notes that in previously rejecting proposals to require that states implement such eligibility requirements in conjunction with non-rural high-cost support, that it found that "section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates." *Id., p. 7, footnote excluded.* The FCC also seeks comment on whether it is best to address affordability issues through low-income programs. The FCC invites state commissions to comment on implementation issues.

Our reply comments address aspects of the initial comments filed by the following parties: (1) Vermont Public Service Board, Vermont Department of Public Service, and Maine Public Utilities Commission (jointly VVM); (2) Qwest; (3) CenturyTel, Inc. (CTI); (4) GVNW; and (5) the Organization for The Promotion and Advancement of Small Telecommunications Companies (OPASTCO).

We would note here that certain of the comments filed jointly by VVM have much to commend. Our reply here will address aspects of VVM's comments involving affordability, the net subscriber cost (NSC) mechanism and use of federal universal service funds (FUSFs). We will note where our support for VVM's comments is cautioned. We would also note here that we support some aspects of Qwest's initial comments while we object to others. We also address Qwest's assertion that the "universal service system is broken" as evidenced by the changed penetration rate for residential subscribership.

We urge a careful reading of our reply comments as the initial comments of parties are not similarly organized and issues that may seem separable are actually related.

Our comments will address in turn: (1) Sufficiency and Reasonable Comparability; (2) Support Mechanism for Non-Rural Carriers; (3) Affordable Service; (4) Defining Terms in 254(b)(1), Quality Service; and (5) Access to Advanced Services. We include as background a restatement of the questions on which the FCC seeks comment.

II. Sufficiency and Reasonable Comparability

Background

The FCC's NOPR seeks comments on the definition of reasonably comparable rates and on if it should consider other aspects of this principle in determining whether non-rural high-cost support is sufficient. *NOPR, para. 13.* Whether telecommunications and information services provided in rural areas are reasonably comparable to services that are provided in urban areas is one such aspect. In determining whether non-rural support is sufficient, the FCC also seeks comment on the extent to which such support is "specific and predicable," pursuant to Section 254(b)(5). *Id., para. 15.* The FCC further inquires into how, in determining that non-rural support is sufficient, it should determine that such support is "competitively neutral" as well as how its prior determination that non-rural support is "portable" affects the analysis. *Id., para. 17.*

The FCC restates the QII court's decision directing the FCC to define the term "reasonably comparable" in a way that comports with its duty to preserve and advance universal service. The court rejected the FCC's analysis in the Order on Remand and concluded that the range of variability of urban rates appropriately measures what should be considered reasonably comparable rural and urban rates, and defining reasonably comparable in terms of a national urban rate benchmark. *Id., para. 18.* In rejecting the FCC's analysis, the court found that the FCC erred when it based its consideration of the term "preserve" on the rate disparities while ignoring its obligation to "advance" universal service, a concept that the court held could result in a narrowing of the existing rural/urban rate gap. *Id.* The FCC seeks comment on how to define "reasonably comparable" rates in order to preserve and advance universal service. In noting the court's concern in QII, that the variance between rural and urban rates was significant, the FCC sought comment on what data it should use to assess the variance between rural and urban rates. The FCC invites comments on where it should obtain rate data including methods of collecting and analyzing such data. *Id.* Other related issues on which the FCC seeks comments include: whether it should compare rural and urban rates within each state; whether a state-specific urban rate benchmark would provide states "more flexibility in designing state rates;" how the FCC would determine state-specific rate comparability benchmarks; in how those benchmarks relate to "any" national urban rate benchmark. *Id., para. 19.* In addition, in regard to whether it should continue to compare rural rates in all states to a single national urban rate benchmark, the FCC seeks comment on the following: which urban rates to use; whether the FCC should seek to narrow the range of urban rates; whether the FCC should compare rural rates to a national average urban rate, some benchmark above the average, and how it would justify any particular percentage above a benchmark. *Id., para. 20.*

As most consumers do not only purchase local service, how to define comparable rates is an issue. The FCC questions whether it should consider a broader range of rates as reasonably comparable in the presence of bundled services. If, for example, the FCC compared rates for packages of services, it may avoid having to adjust local rates to account for differences in calling scopes between rural and urban areas. In addition to packages, as consumers may "access the Internet via a local call or broadband" the FCC asks how the same affects its analysis. *Id., para. 21 and 22.*

Montana PSC Reply Comments

The scope of the issues that the FCC's NOPR raised under this topic of sufficiency and reasonable comparability is extensive. We address a few issues here and then address other issues under the next topic. We agree with VVM that the primary FCC goal should be to ensure reasonably comparable services and rates in rural and urban areas. To that end, we also agree that the use of FUSFs as rate credits achieves this goal and that such credits should be used, as is currently allowed and practiced, to reduce retail rates.

We are not at all convinced that a comparison of the rates and the service content of packaged (bundled) services will provide a substitute for, in the first instance, a valid comparison of basic rates and services, including relevant adders. Until a rate comparison accounts for the disparities in calling scope, and other rate adders (*e.g.*, extended area service (EAS), zonal charges, toll charges, etc.), that are not rolled into average retail rates, a biased comparison will continue to result. We have additional comments related to the choice between a rate-based and a cost-based mechanism that we address later.

In its comments, Qwest proposed to target high-cost support to wire centers and to use a proxy, such as household density, for wire center costs *(Qwest initial comments, p. 10)*. The MTPSC believes that the targeting of costs is an improvement but we disagree with the proxy cost measure proposal. In regard to targeting high-cost support to wire centers, we agree with OPASTCO that rural ILEC territories are, in most cases, entirely rural and that they lack the large low-cost urban centers that enable non-rural carriers to counterbalance the cost of serving their high-cost customers. Targeting high cost support to wire centers should address the dilution of high costs that occurs when such costs are averaged with the costs of lower cost areas. A more accurate high cost estimate should result for Montana and other states that have high cost rural areas. As for the use of household density as a proxy cost metric, we simply do not believe that it will capture all relevant cost drivers.

We address the aspect of sufficiency, that has to do with the principle of affordability, under the sub-heading "Affordable Service."

As for the FCC's inquiry on competitive neutrality and portability of universal service funds, we oppose the continuation of the present identical support mechanism.[3] Making support that is based on an incumbent local exchange carrier's (ILEC's) costs available to competitive eligible telecommunications carriers (CETCs) will result in continued excessive compensation for those CETCs. It also taxes and stresses unnecessarily the FUSF. The alternative is to base each CETC's support on its own costs, not the ILEC's costs. This no doubt means additional work for us all but the benefit will be a more accurate and a more competitively neutral FUSF.

III. Support Mechanism for Non-Rural Carriers

Background

Because the non-rural high-cost support mechanism rests on the definition of reasonably comparable rates that the court invalidated, deeming the support mechanism invalid, the court required the FCC to craft a support mechanism that takes into account all the factors in the Act as well as its statutory obligation to preserve and advance universal service. The court found that the FCC's decision to base the two standard deviations cost benchmark on a finding of reasonably comparable rates was not based upon any demonstrated relationship between costs and rates. *Id., paras. 1, 6, and 23 through 29.*

The FCC asked if in place of a cost-based support mechanism, a rate-based mechanism would better address the statutory principles. If so, the FCC seeks input on how to design a rate-based support mechanism including how rate data would be collected and administered and what "elements" (*e.g.*, just basic rates, or other fees, taxes as well as service bundle components) would be included. The FCC identified anomalies such as urban areas with

[3] *See Montana Public Service Commission Reply Comments, CC 96-45, October 31, 2005, pages 3 and 4.*

high rates and rural areas with low rates and asked how it might handle such circumstances with a rate-based mechanism, including how the high-cost support might be phased out as the rate-based mechanism is phased in. In relation, the FCC asked how it might constrain, if it can, state ratemaking policies that manipulate a rate-based mechanism, as well as what impact such a mechanism might have on the size of the universal service fund.

The FCC asked how the current cost-based mechanism addresses the universal service principles. *NOPR, para. 27.* In relation, the FCC asked about what data are needed in order to show that the current non-rural cost-based mechanism has resulted in reduced rates, as directed by the court in QII. If the current mechanism cannot be shown, empirically, to reduce rates, the FCC asked if there is another cost-based mechanism that can be shown to reduce rates and, if so, the FCC invites details on the specifics (*e.g.*, embedded cost, the geographic aspects such as study area, or wire center average costs).

The FCC seeks comments generally on whether there are other mechanisms, besides cost-based or rate-based ones that might address the court's concerns. In addition, the FCC asked for comments on the NARUC intercarrier compensation (ICC) proceeding generally, but specifically with respect to lumping all support contained in the high-cost mechanisms and, in turn, giving the states discretion to determine how the support would be distributed among carriers operating in each state. *Id., para 29.*

<u>Montana PSC Reply Comments</u>

We agree with the initial comments of VVM and CTI that the high-cost support mechanism ought to be a cost-based, and not a rate-based mechanism. We do not agree with proposals for block grants or capping of universal service support. We disagree with the comment that the universal service support system is "broken." We do not believe that this docket is the forum to address intercarrier compensation. As we expect that one of the FCC's subjects on which it solicited comments will result in a discussion of the "reverse auction" approach, we express our opposition to such an approach.

In contrast to a cost-based mechanism, we agree that a rate-based mechanism could incent state regulators to use their ratemaking authority to maximize FUSF receipts, thereby posing a moral hazard risk. We do not agree that the current FCC rate comparison mechanism is sufficient or complete as it excludes relevant considerations for calling scope and rates (see our above comments, part II). We do not believe that a comparison of package rates will be a "silver bullet." The best approach is to use costs, not rates, to establish levels of support. We agree with VVM that the FCC's current forward looking economic cost (FLEC) mechanism for non-rural support needs improvement. The model needs to be modernized.

Which cost-based mechanism and how that mechanism is tied to rates, are key issues on which we comment. It seems that the FCC has a choice between what we would characterize as bottom-up (FLEC) and top-down (*e.g.*, VVM's net subscriber cost -- NSC -- mechanism) costing approaches.

We have some reservations with VVM's proposed NSC mechanism, ones that stem from an incomplete understanding of how the mechanism would be implemented. As for the NSC formula, we have for now only questions. With a better understanding, we might endorse the NSC mechanism. For now, we encourage the FCC to explore the NSC mechanism.

As for questions about the NSC mechanism we submit the following:

(1) although VVM hold that any sort of costs may be used, we are puzzled about how FLECs, and revenues based upon the embedded cost of service, could be consistently combined and used;

(2) as for revenues, we know that the federally approved "special access" rates that Qwest charges are designed to provide <u>implicit subsidies.</u> Therefore, if these special access rates recover amounts that are more appropriately included as costs, not as revenues associated with subscriber lines, NSCs will, other things being equal, be understated.[4] (How this impacts the non-rural carriers in each state is not known.);

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[4] Qwest reported to receive about $23.5 million dollars annually, almost all of which is from FCC approved <u>special access</u> prices that provide Qwest with <u>implicit subsidies</u>. These services are nearly exclusively provided to CLECs and IXCs. *See Matter Of Establishing Cost-Based Wholesale Prices for the Remainder of Qwest's Network Elements, Utility Division, MTPSC Docket*

(3) another revenue related question regards whether deregulated service revenue (*e.g.*, DSL) and state-regulated wholesale service revenue (e.g., carrier access charges, 271 and 251 UNEs and resold services) should be included or excluded; and,

(4) a final comment regards the switched line count in the NSC formula's denominator. (Would the line count include retail and wholesale lines? Would high capacity loops be systematically and consistently counted as single lines (DS1) or as multiple lines (the DSO capability of each DS1)? How would the NSC formula account for the occasions when an RBOC provides stand alone DSL combined with its own VoIP product (over the same ILEC's loop)? These are some implementation questions that we encourage the FCC to address when it considers VVM's NSC mechanism.)

The FCC under the topic of support mechanisms also invites comments on what we interpret to be a "block grant" proposal.[5] Qwest supports both a block grant proposal and a cap on high cost FUSFs. *Qwest initial comments, pp. 32 and 33.* The MTPSC strongly objects to any form of block grant. We are not alone in our objection. Others, including CTI and GVNW, also oppose a block grant proposal. We agree with GVNW that the block grant proposal could severely retard investment in rural areas. We agree with CTI that a "block grant" proposal would offer less predictability and stability. *CTI initial comments, p. 9.* We strongly urge the FCC to consider the more comprehensive and representative set of comments, most of which object to

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D2002.7.87, Order No. 6435(b), January 26, 2004, findings of fact 107 through 109.

[5] The FCC asked for comments on the NARUC ICC proceeding generally, but specifically with respect to lumping together all support contained in the high-cost mechanisms and, in turn, giving the states discretion to determine how the support would be distributed among carriers operating in each state. *NOPR, para 29.*

block grants, that are on file with the FCC.[6] Block grants would be extraordinarily difficult for Montana, and perhaps other similarly situated rural states, to manage. We have neither the cost models nor the staff resources to take on such responsibilities.

As well, a universal service cap is not only a bad idea but it may not be legal. The MTPSC is concerned that the FCC might freeze the total universal service allocations based on a static test year, such as 2004. The MTPSC opposes such a freeze regardless of how it is implemented. Such a freeze is entirely inconsistent with Section 254 and will lead to protracted battles over shares of a diminished federal universal service fund. We also agree with GVNW that capping will not promote the deployment of a broadband infrastructure. If the growth in the FUSF is to be limited, there are other and better means by which to do so. Foremost, is by not <u>porting</u> FUSFs to CETCs based on an ILEC's costs.

It is also important to address Qwest's comment that the "universal service system is broken" as evident by the change in penetration rates for residential subscribership (*Qwest initial comments, pp. 3 through 5 and 18*).[7] Qwest cites as proof the decrease in the penetration of phone service from about <u>95.3</u>% in 2002 to <u>94</u>% in 2005 (*Qwest initial comments, p. 4*).[8]

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[6] See MTPSC's July 20, 2005 comments filed with the FCC in CC 01-92. See also GVNW's *ex parte* filed July 21, 2005, as it contains an excellent summary of issues associated with block grants.

[7] See also the reply comments that the MTPSC submitted on October 31, 2005 in regard to the Federal State Joint Board's (Joint Board) August 17, 2005, Public Notice relating to high-cost universal service fund (USF) support.

[8] We are aware of the FCC's recent May 12, 2006 Telephone Subscribership In the United States report and that the report indicates that subscribership has dropped by 1.1% from July 2005 to a level of 92.9% in November 2005.

The MTPSC agrees with the FCC that one of the most fundamental measures of universal service is the number (and percentage) of households with telephone service. This is a measure of penetration. It does not follow, however, that based on a decline in the penetration rate that the FUSF support system is broken. Such reasoning is utterly flawed. Between December 1999 and June 2003, for example, the total number of end user (national) switched access lines fell (6.7 million) from 189.5 million to 182.8 million subscriptions.[9] For the same time period, however, mobile telephone service subscriptions increased (62 million) from 86 million to 148 million subscriptions.[10] On net, the number of subscribers from 1999 to 2003 increased by about 55 million.

Whereas penetration of phones in households may have declined by 1.3 percent from 2003 to 2004, there was a significant increase in the overall number of subscriptions.[11] The MTPSC questions whether, because of technologic change, evolving wireless technology, and other means of communications (*e.g.*, pagers, Blackberries, VoIP, cable telephony, etc.), the best measure of penetration is household subscribership. Is the "household" measure of penetration still the best measure of universal service or should a broader measure be used? In ETC proceedings in Montana, for example, the

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[9] FCC's Local Telephone Competition: Status as of June 30, 2003, Table 1 (December 2003).

[10] FCC Ninth Report and Order. Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (September 28, 2004). Table 1. CTIA's Semi-Annual Mobile Telephone Industry Survey. WT Docket No. 04-111, FCC 04-216.

[11] We are not sure that this net change includes increased subscriptions related to other technology platforms that, in turn, would increase the level of subscription. DSL subscriptions (deregulated) by which customers can obtain VoIP service and cable telephony are two such platforms. Thus, there are complications in arriving at valid estimates of the accessibility of telephone service.

ubiquity of wireless service availability is raised as a valid "public interest" (public safety) consideration. In addition, wireless ETC designations afford rural customers an opportunity to have services that are comparable to those afforded urban customers. This does not mean that subscribership is not lagging in some situations.

Whereas the GAO in its January 2006 Report asserts that the national average subscribership level is <u>98</u>%, the level of subscribership for Native American Indians is only about 69%.[12] Wireless service was a solution that the GAO identified to overcome the barrier of "rugged" terrain. In Montana, certain wireless carriers are, with ETC support, expanding into and serving Tribal lands. Sagebrush Cellular Inc. (SCI) has had customers from the Fort Peck Reservation line up for its mobile service. This is a new phenomenon that, in part, stems from SCI having been designated an ETC in Montana combined with its offering of enhanced Lifeline service. SCI also has an obligation to serve 98% of the customers in the service area.[13] Thus, it is not a "broken" universal service system but a working Federal universal service program that enables the likes of Sagebrush Cellular Inc. to provide exactly what Congress in the '96 Act set as a national goal. How much lower would penetration rates be if there was no FUSF? That is the question that Qwest neither asked nor addressed. Qwest has not held that the amount of FUSFs that it receives for Montana is excessive.[14] We are mindful of the axiom of fixing something that is not broken. Can the FCC improve its high cost

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[12] Telecommunications Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands, United States GAO, GAO-06-189 (January 2006).

[13] Great Falls Tribune, January 19, 2006, Tribal Members Rush to get Discounted Cell Service, Jared Miller.

[14] Qwest recently stated that it has no information as to whether universal service, as defined by the FCC, would be better achieved by lesser or greater amounts of funding in Montana. *Montana PSC Docket No. D2005.6.105, Data Response PSC -007(c), February 14, 2006*.

support mechanism? We think it can. But to label it utterly "broken" is neither a fair nor a reasonable appraisal.

We also doubt whether there has occurred sufficient inquiry to explain why subscribership rates have declined. However absurd the correlation is that Qwest has made to a broken universal service system, the root cause of declining subscribership is of interest and one that the FCC might attempt to explain.

In order to fix the "broken" system, Qwest identifies an "auditing, oversight and enforcement" process as a crucial step to root out fraud while minimizing burdens on "law-abiding" carriers (*Qwest initial comments, p. 6*). Ironically, in Montana, the MTPSC has had an epic experience in getting Qwest's cooperation in a review of how it uses FUSFs (*MTPSC Docket D2005.6.105*). Qwest does not agree that the MTPSC has such investigatory authority in Montana and has fought the MTPSC's effort and process every step of the way. Obviously, the MTPSC agrees, notwithstanding the lack of Qwest's cooperation, that such a process is important.

As for the FCC's invite to comment on the NARUC intercarrier compensation (ICC) proceeding we believe it is premature, perhaps misplaced. *NOPR, para 29.* As the FCC is aware, the industry is working towards a consensus position, the so-called "Missoula Plan." The MTPSC does not have an articulate explanation of the plan's content, and may not for sometime. The plan is not apparently public and it may not be complete, therefore other comments on the ICC plan and related (FUSF) issues are not timely. The FCC intends, as we understand, to address ICC issues this year, in an appropriate docket.

The FCC seeks comments generally on whether there are other mechanisms, besides cost-based or rate-based ones that might address the court's concerns. There has appeared in the trade journals mention of the "reverse auction" approach. While there are no details on the parameters for such an approach, we generally understand it to involve pitting one telecommunications carrier against another carrier, with the amount of FUSFs that would be received established by the lowest bidding carrier (the lowest bidder may not even be the carrier that receives such funds). One certainty is that the chief losers will be the wireline ILECs. A "reverse auction" is a valuable tool in the right context, but this is not the right context.

Qwest is correct when in its initial comments it states: "Due to the high fixed costs of telephony, such loss of market share does not significantly reduce Qwest's costs in those markets."[15] The same holds for rural carriers whether they be a large carrier, such as Qwest, or one of Montana's small rural carriers. If the FCC pits carriers against one another by means of a "reverse auction," it is likely that carriers with scale economies and having no obligation to serve each and every customer will financially harm the existing ILECs that have such obligations. We do not necessarily oppose reverse auctions, but in this context, at this point in time, it is a bad idea that should not be the basis for the amount of FUSFs that an ILEC receives.

IV. Affordable Service

Background

The FCC seeks comment on whether to define an affordable benchmark in relationship to income (the NOPR cites to both SBC's median household income proposal and "individual household income"), whether such an approach is consistent with 254(b)(3), or if, in the alternative, the FCC should create for non-rural support "eligibility requirements" based on household income. The FCC has rejected proposals that require states to implement such eligibility requirements for non-rural support given its prior finding that Section 254(b)(3) reflects congress' judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates. *NOPR, p. 7.* The FCC also seeks comment on whether it is best to address affordability issues through low-income programs. The FCC seeks state commission comments on implementation issues.

[15] *Qwest initial comments, p. 21.*

The burden of an affordable rate approach upon universal service contributors and its relation to the principle of "sufficiency" is also an issue for comment, in part, in terms of whether sufficiency was meant to relate only to the principle of affordability.

Montana PSC Reply Comments

We agree with VVM that high cost support advances the principle of having affordable service. We do not believe that FUSFs are sufficient to achieve this goal as there are special needs circumstances. On the other hand, we do not believe that this principle can be achieved solely by means of low income (Lifeline and Link-up) programs. A combination of high cost support and low income programs is necessary. We do not agree with Qwest's proposal to include affordability as an integral part of high cost support.

For those states with carriers that have high cost rural areas a state cannot by itself achieve universal service without FUSFs. If costs are high, in the absence of FUSFs the state's residents will pay either in higher rates or they must choose to forgo telephone service. Based on first principles, cost differences are enormously important as they impinge on rate levels; rate levels impinge on affordability and, in turn, on decisions to subscribe to telecommunications services. In this regard, GVNW asserts in its initial comments that some sparsely populated states do not have enough citizens to absorb the impact of recent proposals such as bill and keep in the ICC debate (*GVNW initial comments, p. 8*). We agree, GVNW's assertion relates to our concern that certain high cost states cannot alone achieve the goal. A fundamental reason for the existence of FUSF support is to assure that customers in high-cost rural areas have access to services and rates that are comparable to those in urban areas, a goal that some states on their own cannot achieve.

While we believe that affordability is relevant, along with rate and service comparability principles, we believe that a proper costing method subsumes and addresses the affordability issue, except for the less fortunate low income in America that have special needs.   Both high cost support and Lifeline and Linkup have the potential to improve the affordability of comparable services. Thus, to achieve both comparable and affordable rates there must be sufficient funding. Affordability should not displace the current cost-basis for high cost FUSFs.

We oppose Qwest's proposal to embed in its comparability of rates the consideration of affordability. This proposal, for the above reasons, ignores the overarching purpose of high-cost funding which is, in the first instance, the pursuit of universal service, arguably because such costs are not affordable. Thus, the accounting for affordability already exists by virtue of the high cost support mechanisms.[16]

Even if the FCC were to decide to include affordability as an integral component of comparability, there are aspects of Qwest's proposal that are not transparent and others that are sufficiently transparent to conclude that the proposal is flawed. First, Qwest's affordability proposal (*Qwest initial comments, p. 25*) is not of comparable services in urban and rural areas. Qwest only includes "basic rates" and "SLCs" (Subscriber Line Charges, *id., p. 24*). Notably missing is the consideration of higher rates in rural areas for extended area service and other basic exchange rate adders such as zone charges, all of which Qwest charges many of its Montana basic exchange customers. Qwest's proposed national average urban rate excludes, inappropriately, any accounting for toll costs. These exclusions are a problem

[16] We note here that our October 31, 2005, Reply Comments to the Federal State Joint Board's (Joint Board) August 17, 2005, Public Notice relating to high-cost FUSF support advised taking a cautions approach on implementing any such affordability mechanism, despite the fact that Montana could fare quite well given its relative low income position. Since the time of those comments we do believe that while such an accounting could be made it is already inherent in the high-cost support mechanism, perhaps not ideally but it is already taken into account.

even if Qwest did not propose that the average of urban rates also be the basis of its affordability benchmark.

In addition, to buttress its proposal, Qwest draws upon "BLS data" to conclude that urban and rural rates are affordable. We cannot tell from Qwest's comparison of services and of "expenditures" whether such an analysis includes a comprehensive comparison of services available in urban and rural areas. The comments are simply not adequate to reach any conclusion on which to base critical analysis and reply comments. We question whether such a comparison is accurate when applied to individual ILECs. Are Qwest's own Montana exchanges categorized as urban or as rural in the BLS data? We note that the "average Annual Expenditures" for households that Qwest cites (*pp. 26-27*) for "Rural" areas was $38,088 for 2004, an amount that exceeds Montana's median family income of about $34,105 (in 2002).[17] To have any value, such an affordability analysis should be as granular as Qwest's proposal to target high cost support on a wire center basis.

Also missing in the affordability benchmark proposal is an analysis of comparable services. As we comment above, DSL access, for example, is not the same in Montana as in urban areas, thus making any comparison of "consumer expenditures" invalid as the services compared are not comparable. Absent an accounting for such economic costs the resulting comparison will be flawed.

In this regard, the Congress held in Section 254 that "Quality services should be available at just, reasonable and affordable rates." Despite this principle, Qwest picks affordability and elevates it while diminishing and relegating to the market the provision of quality services. Quality of service

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[17] United States Department of Agriculture, Economic Research Service. The national average median household income was $42,409 in 2002 while Montana's median household income was $34,105.

cannot, and should not, be dispensed with as essentially irrelevant. It is well recognized that if a seller has market power, competition may be reduced on dimensions other than price such as by variations in service quality. While quality of service may be a complex consideration it is no less important then the comparison of prices. As Alfred E. Kahn has stated, price has no meaning except in terms of an assumed service quality -- price is a ratio of money to the physical unit of quality and quantity.[18] If there is merit in ignoring quality, so must there be merit in ignoring price. We agree, however, with Kahn that price and quality cannot be separated. Both must be considered by the FCC. The FCC must consider both price and quality if its policies are to be non-discriminatory.

The consideration of service quality is important as Qwest also based the proposal to include in its national average urban rate the average of business and residential rates. It does so to account for any "subsidization" of residential rates by business rates (*Qwest initial comments, p. 24*). However, in Montana Qwest has consistently provided higher service quality to businesses than it does to residences. Based on information and metrics the MTPSC has there may be as much as a 100% difference in service quality between basic residential and business exchange service. Again, as Kahn has established, price and quality are inseparable. Thus, what appears a subsidy may not be a subsidy once there is recognition of the differences in service quality. Therefore, the proposal to average urban and residential rates is not at all a clear improvement, especially if service quality is ignored as it is in Qwest's proposal.

V. Defining Terms in 254(b)(1), Quality Service

Background

[18] The Economics of Regulation: Principles and Institutions, p. 21, Alfred E. Kahn, MIT, Cambridge, MA (1970).

The FCC asks if it needs to define any of the terms in Section 254(b)(1) generally and if, for example, its interpretation of "quality services" is to mean "quality of service" (QOS). In addition, the FCC seeks comment on whether it should consider QOS in determining whether non-rural high-cost support is sufficient. *NOPR, p. 7.*

Montana PSC Reply Comments

Because of the relationship to other issues, we include comments on quality of service in our above comments on Affordable Service.

VI. Access to Advanced Services

Background

The FCC NOPR notes how Section 254(b)(2) provides that access should be provided to advanced telecommunications and information services in all regions of the nation. In this regard, the FCC reminds all that such services are not supported by the non-rural mechanism but that the public switched telecommunications network (PSTN) is not a single-use network. The FCC has held that the use of support to invest in infrastructure capable of providing access to advanced services is not inconsistent with Section 254(e) requiring that it be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The FCC asks whether it should consider if the non-rural high-cost support is sufficient to enable carriers to upgrade networks in their high-cost areas so as to enable the provision of advanced services. *NOPR, pp. 7 and 8.* The FCC also asks how it should consider whether non-rural support enables access by schools, libraries and health care providers to advanced telecommunications services. *Id., para. 16.*

Montana PSC Reply Comments

We agree with VVM that the FCC should broaden the "no barriers" approach beyond rural carriers to also include non-rural carriers. VVM urge the FCC to consider allowing the use of FUSFs for advanced services. Qwest disfavors high-cost support for the deployment of broadband services. It adds that high-speed service is now available to over 70 percent of Qwest's access lines (*Qwest initial comments, pp. 13 and 14*). In Montana, however, Qwest does not provide DSL to even half of the Montana offices (wire centers) that it serves.[19] Presumably the reason why Qwest does not serve all of its wire centers in Montana is because of the associated high cost. Qwest may provide access to 65% of its lines by picking off the high density towns and cities, while not providing DSL in a majority of its wire centers. Therefore, the MTPSC would not oppose high cost funding for broadband given that it is not ubiquitously available, presumably because of the associated high cost. Until it is supported, all of Qwest's Montana customers will not likely have comparable access to broadband service and at comparable rates found in urban areas. Montana's rural customers, if they are to have services comparable to those that urban customers' have, ought to have access to broadband at affordable rates.

We would only add that there is a complexity emerging, perhaps emerged in other states, that involves VoIP and DSL. We also have in Montana a disagreement among ETCs of whether VoIP is a means to provide the nine supported services with the result that it would receive FUSFs. As a further complexity, and not entirely hypothetical, will non-rural carriers that provide stand alone DSL to customers in a high cost areas and that use VoIP as the platform for voice communications receive the same FUSFs that they would otherwise receive based on the cost of providing service? The FCC should address this issue.

Dated this 25th day of May 2006.

Montana Public Service Commission

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[19] These comments are drawn from the record in Montana PSC Docket No. 2005.6.105 including the February 14, 2006, discovery responses submitted by Qwest.

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